86-748

No. _____

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

UNITED STATES ex rel. CHUNIE, et al.,

Petitioners,

vs.

MARIE RINGROSE, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RESPONDENT STATE OF CALIFORNIA'S MEMORANDUM IN OPPOSITION

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State of California

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QUESTION PRESENTED FOR REVIEW

The Act of 1851 implementing the Treaty of Guadalupe Hidalgo was enacted for the overriding purpose of providing repose to land titles in California.

The question presented is:

Whether petitioners' claim to a right of permanent occupancy of the State of California's sovereign tide and submerged lands surrounding certain islands was extinguished by the failure of petitioners' predecessors to present a claim pursuant to the Act of 1851.

MEMORANDUM OPPOSING CERTIORARI

Petitioners claim to hold unextinguished aboriginal title to the State of California's sovereign tide and submerged lands surrounding Santa Cruz and Santa Rosa Islands. The Ninth Circuit held that petitioners lost any interest they may have had in those areas because of the unquestioned failure of their predecessors to submit a claim pursuant to the Act of March 3, 1851, 9 Stat. 631, ch. 41. This holding is based on a long and unbroken line of Supreme Court decisions. Barker v. Harvey, 181 U.S. 481, 491-92 (1901); United States v. Coronado Beach Co., 255 U.S. 472, 488 (1921); United States v. Title Insur. & Trust Co., 265 U.S. 472, 482 (1925); Super v. Work, 3 F.2d 90, 91 (D.C. Cir. 1925), aff'd, 271 U.S. 643 (1926); United States ex rel. Hualpai Indians v. Santa Fe Pacific R.R., 314 U.S.

339, 350 (1941); Summa Corp. v. California ex rel. State Lands Commission, 466 U.S. 198, 208-09, 104 S. Ct. 1751 (1984).

Cramer v. United States, 261 U.S. 219 (1923), cited by petitioners, is completely distinguishable and is not inconsistent with these cases. In Cramer, it was specifically noted that the Act of 1851 had no application to the Indian occupancy claim in that case for, among other reasons, the occupancy had not commenced when the Act of 1851 was passed. Id. at 231. In this case, petitioners have claimed that the aboriginal occupancy claim existed at the time the Act of 1851 was passed.

Since the cases relied upon by the Ninth Circuit are controlling, respondent State of California joins with the other respondents, private parties who hold record fee title to Santa Cruz and Santa Rosa Islands, in submitting that there is

no reason for the Court to grant certiorari in this case.

Therefore, the petition for a writ of certiorari should be denied.

John K. Van de Kamp
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State of California

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